

1982 WL 189434 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 23, 1982

*1 The Honorable Charlie G. Williams
State Superintendent of Education
State of South Carolina
Department of Education
Rutledge Building
Columbia, S. C. 29201

Dear Dr. Williams:

You have requested the opinion of this office as to whether local school districts could adopt any of several alternatives for reducing teacher salaries as a means of complying with the Budget and Control Board's 4.6% cut in funds for the Education Finance Act ([§ 59-20-10, et seq. of The Code of Laws of South Carolina \(1976\)](#)). The methods about which you have inquired include reducing salaries by an equal percentage to levels above or below the state minimum salary schedule or reducing pay on a prorata basis if the legislature acts in 1983 to shorten temporarily the statutory school term.

The answers to these questions are greatly dependent upon the language of the contracts that the school districts have signed with their teachers. Uniform contracts are not used in South Carolina and each district should discuss its contracts with its local attorney; however, for the purpose of this opinion, I am assuming that the teachers are contractually entitled to particular salaries but that their contracts contain clauses making their compensation and employment contingent upon the availability of the necessary funding.

These contingency clauses should give the school districts some flexibility in reducing salaries. Georgia courts upheld salary reductions for school teachers whose contracts contained somewhat similar clauses but rejected them for college professors whose contracts did not contain such language ([Austin v. Benefield, 140 Ga. App. 96, 230SE 2d 16 \(1976\)](#)); [Busbee v. Georgia Conference American Association of University Professors, 235 Ga. 752, 221 SE2d 437 \(1975\)](#)); however, any South Carolina school district cutting salaries would face the question of whether the district did not in fact have 'available' funds for salaries, an issue not addressed by the Georgia courts. The answer to this question will depend upon the language of the contract clauses and the particular financial circumstances of the district. No opinion is expressed herein as to whether any district has available funds. ¹ , ²

Even if a district's circumstances would enable it to cut teachers' salaries under the terms of its contracts, the district could not reduce those salaries below the minimum mandated by the Finance Act absent legislative action enabling it to do so ([§ 59-20-50\(4\)](#)). Similarly a district could not reduce the number of days of the school term as a means of lowering salaries without the General Assembly's authority in that the length of the term is mandated by state law. [See Act 466, § 28, Acts and Joint Resolutions of South Carolina, 1982, p. 316; see also § 59-21-20 of The Code](#), as amended.

The contingency clauses would help to prevent any legislation applying to present teacher salaries from being viewed as an impairment of contracts. Nevertheless, such legislation should be drafted so as to avoid any possible impairment which could be deemed unconstitutional. Accordingly, it should give districts the option of reducing salaries rather than mandating that all pay be lowered. Although constitutional prohibitions as to laws impairing the obligation of contracts do not prevent the state from properly exercising its police power for the general welfare ([G-H Insurance Agency, Inc. v. Continental Insurance Co., Opinion No. 21765 Filed July 22, 1982, Smith's Advance Sheets](#)), legislation which would require across the board pay reductions might

not withstand a challenge from a teacher in a district which had the funds to pay him or her. Instead, legislation which would state that an economic emergency exists in South Carolina and then would temporarily empower districts to reduce salaries according to local needs or by shortening the school term would appear to be sustainable under the authority discussed in G-H. By shortening the length of the term and not paying teachers for the days lost, the law could be viewed and supported as a temporary measure based on present needs. A direct cut in annual salary alone might not be viewed as temporary if it were reflected in pay for future years. See [Home Building and Loan Association v. Blaisdell](#), 54 Sct 231, 78 LEd 413 (1984); [Olson v. Cory](#), 609 P2nd 991, 164 Cal Rptr 217 (1980). In addition, such a law would also be consistent with more general state laws which empower the Budget and Control Board to require a reduction in the rate of expenditures if the Board determines that a deficit may occur and laws which contemplate reduced state and local Finance Act funding in times of revenue shortages. See Act 466 §§ 28 and 132 and § 59-20-40.

*2 The validity of any salary reduction will depend upon its being properly based on the terms of individual contracts, the particular fiscal problem of each of the districts, and any legislation passed by the General Assembly. Therefore, all school districts desiring to consider reducing teacher salaries should discuss their options with their attorneys.

If we may be of further assistance, please do not hesitate to contact us.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

- 1 Availability of funds clauses should remove any question of whether a district lacking funds would be obligated to fund salaries by raising taxes or borrowing. Although the language of each contract must be carefully considered, the clauses were probably not intended to count funds that might be raised in the future through these means; however, applicable local and state laws should be checked by each district.
- 2 Some question might be raised as to whether any of the teachers' contracts would come within the terms of § 59-19-290 which deems contracts void which boards of trustees ' . . . make in excess of the funds apportioned to their districts . . . [emphasis added]. ' Here, because these contracts were made before the reduction in state funds, the issue of whether they are 'in excess of the funds apportioned' need not be reached, and the statute does not apply.

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